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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CV 08   3911

THOMAS E. MARTINEZ,

           Petitioner,

  vs.

JAMES A. YATES, Warden, et al.,

          Respondents.

No._____

[PROPOSED] ORDER

E-filing

(PR)

    Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, together with an application to proceed in forma pauperis.

    Examination of the in forma pauperis application reveals that petitioner is unable to afford the filing fee. Accordingly, the application to proceed in forma pauperis is granted. See 28 U.S.C. § 1915(a).

    Petitioner has filed a motion asking that the court stay this action while he exhausts state court remedies with respect to claim 2. Petitioner's declaration and the exhibits in support of the motion and the habeas petition satisfy the requirements of Rhines v. Weber, 544 U.S. 269, 275 (2005).

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1   In accordance with the above, IT IS HEREBY ORDERED that:

2   1. Petitioner's application to proceed in forma pauperis is granted;

3   2. Petitioner's August 4, 2008 request for a stay is granted;

4   3. Within 90 days of this order, petitioner shall file a status report

5 on the progress of the state exhaustion petition;

6   4. If the state exhaustion proceedings are not completed within one hundred

7 eighty days of the date of this order, petitioner shall file a second status

8 report, and further reports at ninety day intervals until the exhaustion process

9 is completed;

10   5. Within thirty days of the California Supreme Court's resolution of

11 the state action, petitioner shall file a motion to lift the stay together

12 with either a motion to dismiss the action or a motion to file an amended

13 petition or a notification that petitioner wishes to proceed on the petition

14 filed August 4, 2008.

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DATED:_____
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U.S. MAGISTRATE JUDGE

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